

Ordinance No.: 16-57
Zoning Text Amendment No.: 10-12
Concerning: RDT Zone - Child Lot
Standards
Draft No. & Date: 2 – 10/1/10
Introduced: July 27, 2010
Public Hearing: September 21, 2010
Adopted: October 26, 2010
Effective: November 15, 2010

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the density calculations in the RDT Zone to exclude a child lot under specified conditions;
- amend the standards to approve a child lot in the RDT Zone; and
- generally amend the child lot provisions in the RDT Zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATIONS”
Section 59-A-2.1	“Definitions”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.41	“Density in RDT zone”
Section 59-C-9.74	“Exempted lots and parcels-Rural Density Transfer zone”

And adding:

Section 59-C-41.1 “Child Lots in the RDT Zone”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment (ZTA) 10-12, introduced by Councilmember Knapp on July 27, 2010, would amend the Zoning Ordinance to:

- 1) add a provision for child lots to the intent of the RDT zone;
- 2) explicitly allow child lots in addition to the density otherwise allowable;
- 3) clarify the requirement to retain a development right for each child lot;
- 4) require the owner to personally establish continuous ownership since 1981;
- 5) allow up to 3 child lots for each qualified owner, with a provision for hardships;
- 6) require a minimum tract size based on the number of child lots created;
- 7) establish a maximum lot size for a child lot; and
- 8) require that the child for whom the lot was created own the child lot for at least 5 years, with a provision for hardships.

The Planning Board transmitted its comments regarding ZTA 10-12 in a letter dated September 20, 2010. The Planning Board supported the ZTA with certain amendments, many of which were supported by the Council. The Planning Board recommended changes to the provisions that required a development right for a farm tenant dwelling, allowed more than 3 child lots due to hardships, limited the lot size, indicated when ownership by the child must be established, established the period of ownership, and established penalties for violations.

The County Council held a public hearing on September 21, 2010 to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on October 11, 2010 to review the amendment and the issues raised in the public hearing which were documented in the staff reports for those meetings. At that time, the Committee recommended the approval of ZTA 10-12 with the following changes:

- 1) eliminate the requirement that a development right be retained for a farm tenant dwelling or accessory dwelling;
- 2) allow up to 2 additional child lots beyond those allowed in the ZTA under specific circumstances and with a recommendation from the Agricultural Preservation Advisory Board; eliminate the provision that would have allowed an unlimited number of additional child lots based on a finding by the Planning Board of a hardship;
- 3) clarify that a child lot may only exceed 3 acres if an on-site well and septic system is not feasible and the lot cannot be served by a septic easement;
- 4) require the child to be listed as the owner of the property when the building permit is filed;
- 5) strengthen the penalty provisions and require that the deed indicate that the child lot is subject to ownership and transfer requirements in the zoning ordinance;
- 6) add grandfathering provisions for existing, built child lots and child lots that have submitted preliminary plans or received preliminary plan approval;
- 7) clarify that the number of child lots allowed on tracts of land under state or County agricultural easement is determined by the easement if the owner has retained one development right for each lot and the easement does not allow a total of more than 1 unit per 25 acres; and
- 8) clarify that child lots can only be created by property owners who owned the land prior to 1981; exemptions for lots that are not child lots apply to properties if the land was owned prior to the rezoning to the rural density transfer zone.

The Committee discussed the fact that off-site septic easements are not currently allowed by the State, and indicated that the ZTA language regarding limits on the size of the lot should **not** lead to a delay in the Planning Board's consideration of applications for child lots, pending any future state decision regarding off-site septic easements.

The District Council reviewed Zoning Text Amendment No. 10-12 at a worksession held on October 26, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 10-12 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

59-A-2.1. Definitions.

In this Chapter, the following words and phrases have the meanings indicated:

* * *

Child Lot: A lot created for use for a one-family dwelling unit by a child, or the spouse of a child, of a property owner.

* * *

Immediate Family Member: A person's parents, spouse, children, and siblings.

* * *

Sec. 2. DIVISION 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

Sec. 59-C-9.2. Purposes or intent of the zones.

* * *

59-C-9.23. Intent of the Rural Density Transfer zone.

The intent of this zone is to promote agriculture as the primary land use in sections of the County designated for agricultural preservation in the General Plan, ~~[[and]]~~ the Functional Master Plan for Preservation of Agriculture and Rural Open Space, and other master plans. This is to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.

Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural operations are permitted at any time, including the operation of farm machinery. No agricultural use can be subject to restriction on the grounds that it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural

in nature are subject to the regulations [prescribed] in [[this]] [division] Division 59-C-9 and in [division] Division 59-G-2, "Special Exceptions-Standards and Requirements."

The intent of the child lot option in the Rural Density Transfer zone is to facilitate the continuation of the family farming unit or to otherwise meet the purposes of the RDT zone.

* * *

59-C-9.4. Development standards.

The following requirements apply in all cases, except as specified in the optional standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and the exemption provisions of section 59-C-9.7.

59-C-9.41. Density in RDT zone.

[Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined in section 59-A-2.1, title "Definitions."
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of division 59-G-1 and 59-G-2.]

[[Except as provided in subsection (a) or (b), only one one-family dwelling unit per 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.) Density above one one-family dwelling unit per 25 acres is allowed if:

- (a) the dwelling unit is accessory to a farm, is not on a separate parcel or lot, and is either:

- (1) a farm tenant dwelling, farm tenant mobile home, or guest house; or

- (2) an accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2;
- (b) the lot is a child lot under Section 59-C-9.41.1; and
- (c) a building right is retained for each dwelling unit.]]
- Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:
- (a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined in section 59-A-2.1, title "Definitions."
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2.

59-C-9.41.1. Child Lots in the RDT Zone.

- (a) **Applicability.** A child lot above the density of one one-family dwelling unit per 25 acres is allowed in the RDT zone only if the following requirements are satisfied.
- (1) The property owner must have:
- (A) recorded title to the property before January 7, 1981;
- (B) personally applied for approval to create the lot; and
- (C) retained a development right for each lot.
- (2) The Planning Board must not approve more than one child lot for each child of the property owner, regardless of the number of properties owned.
- (3) [[Unless the Planning Board finds that a limit on the number of child lots would be a hardship]] Except as provided in subsection 59-C-9.41.1(a)(4), a maximum of 3 child lots can be established for a qualifying property owner under subsection (1):

(A) one child lot is allowed on a tract of land of at least 25 acres;

(B) two child lots are allowed on a tract of land of at least 70 acres;

(C) three child lots are allowed on a tract of land of at least 120
acres.

(4) The Planning Board may approve up to two additional child lots
above the maximum number allowed in Section 59-C-9.41.1(C)(3) if
the additional child lot:

(A) is not encumbered by a State or County Agricultural Land
Preservation Easement;

(B) meets the applicability requirements in Section 59-C-9.41.1;

(C) is on the landowner's only real property holdings in the County;
and

(D) the tract of land for four child lots is at least 170 acres and the
tract of land of land for five total child lots is at least 220 acres.

In determining whether to approve the additional child lots, the
Planning Board must consider any recommendation from the
Agricultural Preservation Advisory Board (APAB) about whether the
additional lot will promote the continuation of the family farm unit or
otherwise meet the purposes of the RDT zone.

(5) A lot created for a child must be no larger than [[one acre, or]] the
minimum area necessary for approval of well and septic. The
Planning Board may approve a lot larger than 3 acres only if an on-
site well and septic system is not feasible and the lot cannot be served
by a septic easement. The area of the driveway stem on a flag lot
must not be included in the maximum area limit.

107 ~~[(5)]~~(6) When a building permit application is initially filed ~~[[child lot~~
 108 is initially recorded]], the child for whom the lot is created must be the
 109 listed owner of the lot in the County land records.

110 (b) **Building Permit Restricted.** A building permit for a one-family dwelling
 111 unit on a child lot must be issued only to:

- 112 (1) a child of the property owner;
- 113 (2) the spouse of a child of the property owner;
- 114 (3) a contractor for a child of the property owner; or
- 115 (4) a contractor for the spouse of a child of the property owner.

116 (c) **Transfer restricted.** Except as provided in ~~[[subsection]]~~ subsections (c)(1)
 117 and (c)(2), ownership of a child lot must not be transferred or leased within 5
 118 years of the date of the Department of Permitting Services' final inspection
 119 of the dwelling unit.

- 120 (1) The owner of the child lot may only lease the lot to an immediate
 121 family member.
- 122 (2) Ownership of a child lot may be transferred if the Planning Board
 123 finds a hardship after the date of final inspection, such as death of the
 124 child or a bona fide foreclosure of the mortgage or deed of trust.

125 ~~[[d)]~~ **Penalty for Violations.**

- 126 (1) Except as provided in subsection (d)(2), any violation of this
 127 subsection is subject to the penalty and enforcement provisions in
 128 Section 59-A-1.3.
- 129 (2) The Planning Board may take legal action to stop or cancel any
 130 transfer or building permit of a child lot if any party to the transfer or
 131 the building permit does not comply with all requirements of Section
 132 59-C-9.41.1. The Planning Board may recover any funds improperly
 133 obtained from any sale or lease of a child lot in violation of this

subsection, plus costs and interest at the rate prescribed by law from the date a violation occurred.

(e) **Covenant required.** A covenant between the property owner and the Montgomery County Planning Board must be recorded in the Montgomery County land records. The covenant must:

- (1) be recorded simultaneously with the record plat;
- (2) identify the transfer restrictions in subsection (c); and
- (3) identify the penalties for violations as identified in subsection (d).]]

(d) **Penalty for Violations.** Any violation of this subsection is subject to the penalty and enforcement provisions in Section 59-A-1.3. Every day a transfer restriction is violated is a new violation.

(e) **Deed Restrictions and Certificates of Compliance.**

- (1) Any deed or other instrument conveying title from the owner of the property to a child must be signed by both the grantor and the grantee.
- (2) In any deed or other instrument conveying title from the owner of the property to a child, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that the conveyed property is a child lot subject to the requirements of subsection (c).
- (3) If the Planning Director determines that a child lot may be transferred under subsection (c)(2), the Director must issue a certificate of compliance to the owner of the child lot in a form appropriate for recordation in the land records. The certificate is conclusive evidence of the owner's compliance with subsection (c).

(f) **Provisions for existing child lots and preliminary plan applications for child lots filed before October 1, 2010.**

(1) A child lot is permitted on a tract of land of any size where the child lot has an existing dwelling unit and is either identified on a plat recorded before October 1, 2010 or held pursuant to a deed that indicates conveyance from parent to child and was recorded before October 1, 2010, subject to the following provisions:

(A) one lot for every 25 acres plus one additional lot for each child lot;

(B) a child lot of any size;

(C) no limitations on ownership.

(2) A child lot is permitted on a tract of land of any size with a preliminary plan approved before October 1, 2010, subject to the ownership and transfer provisions of Section 59-C-9.41.1, and may be identified on a plat recorded among the land records of the County using the following provisions:

(A) one lot for every 25 acres plus one additional lot for each child lot;

(B) a child lot of any size.

(3) A child lot is permitted on a tract of land of any size with a preliminary plan application filed, but not approved, before October 1, 2010 and must satisfy all of the provisions of Section 59-C-9.41.1, except it may be approved with a density of one lot for every 25 acres plus one additional lot for each child lot.

(4) A child lot previously recorded by plat is exempt from the limit on number of child lots and the lot area, and size limits of Section 59-C-9.41.1, provided that the density does not exceed one lot for every 25 acres plus one additional lot for each child lot.

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59-C-9.7. Exempted lots and parcels and existing buildings and permits.

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59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.

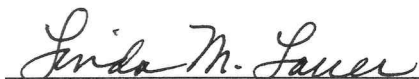
- (a) [[The number of lots created for children [in accordance with] under the Maryland]] For a tract of land encumbered by a State or County Agricultural Land Preservation Easement, [[Program must not exceed the development rights assigned to the property and retained by the property owner]] the total number of lots, including child lots, is governed by the requirements of the easement recorded in the land records of Montgomery County, if there is a development right for each lot and the total number of lots allowed by the easement does not exceed the density of one residential dwelling unit for every 25 acres.
- (b) The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them [prior to their classification in the Rural Density Transfer zone] before [[January 7, 1981]] their classification in the Rural Density Transfer zone.
- (1) A recorded lot created by subdivision, if the record plat was approved for recordation by the Planning Board [prior to the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone] before [[January 7, 1981]] the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
 - (2) A lot created by deed executed [on or] before [the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone] [[January 7, 1981]] the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.

- (3) A [record] recorded lot having an area of less than 5 acres created after [the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone] [[January 7, 1981]] the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone by replatting 2 or more lots; provided that the resulting number of lots is not greater than the number which were replatted.
- (4) A lot created for use for a one-family [residence] dwelling by a child, or the spouse of a child, of the property owner, [provided that the following conditions are met] if the lot satisfies the requirements of 59-C-9.41.1. [:
- (i) The property owner can establish that he had legal title on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;
 - (ii) This provision applies to only one such lot for each child of the property owner; and
 - (iii) Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property owner.]

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Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council